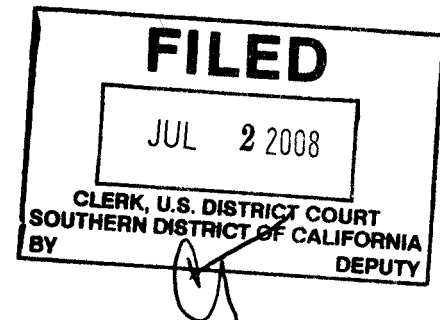


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UNITED STATES OF AMERICA



8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,)	Criminal Case No. 08CR1552-W
)	
12 Plaintiff,)	
)	
13 v.)	STIPULATION OF FACT AND JOINT
)	MOTION FOR RELEASE OF
14 MARK ANTHONY GALLEGOS,)	MATERIAL WITNESS AND
)	<u>ORDER THEREON</u>
15 Defendant.)	
)	

16
17 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES
18 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and David D.
19 Leshner, Assistant United States Attorney, and defendant MARK ANTHONY GALLEGOS, by and
20 through and with the advice and consent of defense counsel, Gregory T. Murphy, Federal Defenders
21 of San Diego, Inc., that:

22 1. Defendant agrees to plead guilty to Count Two of the Indictment charging defendant
23 with a non-mandatory minimum count of Harboring Aliens and Aiding and Abetting, in violation
24 of 8 U.S.C. §1324(a)(1)(A)(iii) and (v)(II).

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28 //

1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
2 provide the signed, original plea agreement to the Government not later than July 2, 2008 before the
3 disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
5 before July 2, 2008.

6 4. The material witness, Ismael Ayon-Fernandez, in this case:

7 a. Is an alien with no lawful right to enter or remain in the United States;

8 b. Entered or attempted to enter the United States illegally on or about April 19,
9 2008;

10 d. Was having others pay on his behalf \$2,000 to others to be brought into the
11 United States illegally and/or transported illegally to his destination therein;

12 e. Defendant harbored Ismael Ayon-Fernandez in a residence at 941 First
13 Street,

14 Calexico, California, and defendant knew or acted in reckless disregard of the fact that Ismael Ayon-
15 Fernandez was an alien with no lawful right to enter or remain in the United States; and,

16 f. Ismael Ayon-Fernandez may be released and remanded immediately to the
17 Department of Homeland Security for return to his country of origin.

18 5. After the material witness is ordered released by the Court pursuant to this stipulation
19 and joint motion, if defendant does not plead guilty to the charge set forth above, for any reason, or
20 thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,
21 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

22 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
23 substantive evidence;

24 b. The United States may elicit hearsay testimony from arresting agents
25 regarding any statements made by the material witness provided in discovery, and such testimony
26 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against
27 interest of an unavailable witness; and,

28 Stipulation of Fact and Joint Motion for Release of
Material Witness(es) And Order Thereon in
United States v. Mark Anthony Gallegos

1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
2 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted
3 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant
4 waives the right to confront and cross-examine the material witness(es) in this case.

5 6. By signing this stipulation and joint motion, defendant certifies that defendant has
6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
7 further that defendant has discussed the terms of this stipulation and joint motion with defense
8 counsel and fully understands its meaning and effect.

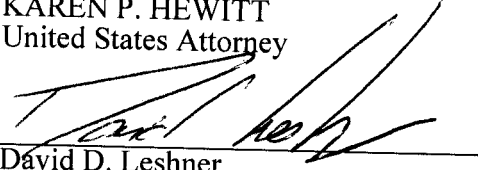
9 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
10 immediate release and remand of the above-named material witness to the Department of Homeland
11 Security for return to his country of origin.

12 It is STIPULATED AND AGREED this date.

13 Respectfully submitted,

14 KAREN P. HEWITT
15 United States Attorney

16 Dated: 7/2/08.

17 
18 David D. Leshner
19 Assistant United States Attorney

20 Dated: 7/2/08.

21 
22 Gregory T. Murphy
23 Defense Counsel for ~~Ismael Ayon Fernandez~~ Mark Anthony Gallegos

24 Dated: 7-2-08.

25 
26 Mark Anthony Gallegos
27 Defendant

28 Stipulation of Fact and Joint Motion for Release of
Material Witness(es) And Order Thereon in
United States v. Mark Anthony Gallegos

ORDER

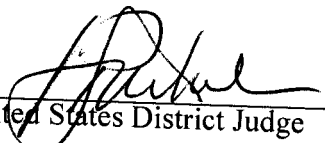
Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witness be released and remanded forthwith to the Department of Homeland Security for return to his country of origin.

SO ORDERED.

Dated: 7/2/08.


United States District Judge